INDEX.

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statement of Facts	2–8
Summary of Argument	8
Argument	8–15
I. The petitioner could not under Massachusetts law avail itself of the defenses of illegality and *ultra vires* as it had ample power to carry on the transactions involved and it received full benefit from them	8–11
Petitioner's cases distinguished	10, 11
II. The petitioner is not permitted by the law of Massachusetts to escape liability on the ground that the evidence was insufficient to warrant the jury verdict.	12–15
III. Conclusion	15

TABLE OF CASES.

Ashley v. Winkley, 209 Mass. 509	10
Bazirgan v. Arnold & Sears, Inc., 275 Mass. 207	9
Board of Trade v. Christie Grain and Stock Co., 198 U. S. 236	8
Bowen v. Farley, 256 Mass. 19	12
Bremer v. Hadley, 196 Mass. 217	10
Dolben v. Gleason, 292 Mass. 511	10
Dome Realty Co. v. Gould, 285 Mass. 294	11
Downey Co. v. The 282 Beacon Street Trust, 292 Mass. 175	11
Downey Co. v. Whistler, 284 Mass. 61	11
Dumaine v. Dumaine, 301 Mass. 214	10

Page

Edwards v. International Pavement Co., 227 Mass. 206 . 11
Erie R. Co. v. Tompkins, 304 U. S. 64 2
Forgeron v. Corey Hill Garage, Inc., 249 Mass. 163 . . 12
Glovin v. Eagle Clothing Co., 247 Mass. 215 . . . 12
Greco v. Hubbard, 252 Mass. 37 10
Harris v. Friedmann, 245 Mass. 479 9
Hartford v. Mass. Bowling Alleys, Inc., 229 Mass. 30 . 12
Horgan v. Morgan, 233 Mass. 381 . . . . . 14, 15
Horowitz v. State Street Trust Co., 283 Mass. 53 . . 10, 11
Howe v. Howe, 199 Mass. 598 14
Hull v. Newhall, 244 Mass. 207 13
Interstate Circuit v. United States, 306 U. S. 208 . . 14
Irwin v. Williar, 110 U. S. 499 9
Kirby v. Tallmadge, 160 U. S. 379 14
Lester v. Webb, 1 Allen 34 12
McKean Co. v. Sidebottom, 277 Mass. 158 . . . 11
Nims v. Mt. Hermon Boys' School, 160 Mass. 177 . 11, 12, 15
Poirier v. Terceiro, 224 Mass. 435 14
Rand v. Farquhar, 226 Mass. 91 13
Reed v. Ashburnham Railroad Co., 120 Mass. 43 . . 12
In re Rosenbaum Grain Corp. 103 F. (2d) 656 (C. C. A. 7) . 8
Runkle v. Burnham, 153 U. S. 216 14
Ryan v. Whitney, 257 Mass. 218 9
Savoy Finance Co. v. DeBiase, 281 Mass. 425 . . . 9
Tuttle v. First National Bank of Greenfield, 187 Mass. 533 . 10
United States v. N.Y. Coffee and Sugar Exchange, 263 U. S. 611 8
West v. American Tel. & Tel. Co., 311 U. S. 223 . . 2
Whittier v. Child, 174 Mass. 36 13
Young v. United Zinc Cos., 198 Fed. 593 (C. C. A. 1) . 11
Zevitas v. Adams, 276 Mass. 307 12

In the

Supreme Court of the United States.

OCTOBER TERM, 1941.

No. 93.

OCTOBER TERM, 1940.

No. 1069.

M. JACOBSON & SONS TRUST,
Petitioner,
v.
DOUGLASS M. BOMEISLER, ET ALS.,
CO-PARTNERS DOING BUSINESS UNDER THE FIRM NAME AND STYLE OF E. A. PIERCE & COMPANY,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO COURT OF APPEALS FOR THE FIRST CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

Opinions Below.

The opinion of the Circuit Court of Appeals for the First Circuit ordering judgment for these respondents pursuant to the jury's verdict is reported in 118 Fed. (2d) 198 (pamphlet issue of April 28, 1941). It appears in the record pages 130-138.

The District Judge in reopening the original judgment entered on the verdict and setting that judgment aside (R. 13) filed no opinion. The charge of the District Court to the jury, under which was returned a verdict for the

respondents, plaintiffs, (R. 11) in the full amount of their claim, appears in the record pages 115 to 126 and 128.

Jurisdiction.

The suit was brought by the respondents in the District Court for the District of Massachusetts on the ground of diversity of citizenship in May 1939 to recover $5,458.34. Each of the respondents is a citizen of a state other than Massachusetts (R. 2) and at all times involved all of the trustees and shareholders of the petitioner were residents of Worcester, Massachusetts. (R. 130) The judgment of the Court of Appeals was entered March 17, 1941. (R. 138) The petition for certiorari was filed May 20, 1941. The jurisdiction of this court is invoked under section 240(a) of the Judicial Code as amended. (28 U.S.C. Section 347 (a))

The Question Presented.

Whether the Court of Appeals in ordering judgment for the respondents, plaintiffs, on the verdict failed to apply the unwritten law of Massachusetts as declared by its courts within the requirement of Section 34 of the Judiciary Act of September 24, 1789 (28 U.S.C. Section 725) and of the decisions of this court in *Erie R. Co.* v. *Tompkins,* 304 U.S. 64 and *West* v. *American Telephone & Telegraph Co.,* 311 U.S. 223.

Statement of Facts.

The respondent brokerage firm maintains offices in many cities of the country for the execution of orders on stock, commodity or other trading exchanges and it holds memberships among others in the New York Stock Exchange, Curb Exchange, Cotton Exchange and Commodity Exchange.

The petitioner, a voluntary association suable as an entity, was created by declaration of trust. (Exh. 1, R. 85 to 90) It has broad powers to buy, sell, import and export live

stock of all kinds, to slaughter live stock of all kinds, and specifically to "deal generally in hides and all other animal products." (R. 85)

While the petitioner claimed it had no account with the respondents, it agreed (R. 19) that as alleged the respondents, as brokers for the account of somebody, actually executed the various transactions referred to in accordance with the rules, usages and customs of the Commodity Exchange, Inc. in New York City and that the respondents received and paid the monies set forth in the declaration.

The petitioner further agreed that the dealings began in 1936 and continued into April 1939 but said that the account on which they took place was not its account but that of one Eli Jacobson. (R. 19)

In addition there was evidence showing the respondents' course of business (summarized in Exhibits 14 (R. 111) 15 and 16, and explained R. 30 to 35) which shows that on each transaction the respondents became obligated on a written memorandum for the purchase funds or contracts sold.

Eli Jacobson was one of the signers of Exhibit 1 and one of the three trustees named therein. He had been since its organization and was at the time of the trial the treasurer of the petitioner duly elected under Article 8. He had sole signing authority on certain bank deposits of the petitioner (R. 50, 56, 82) and his signature alone was sufficient on any check or for the approval of any bill. (R. 49, 60, 87) He was the principal user of the only desk in the head office of the petitioner and he was its chief financial officer. (R. 47, 48) He handled the borrowing and had authority to borrow for the petitioner on his single signature. (R. 76, 92)

All the orders given to and executed by the respondents for the purchase or sale of contracts for future delivery of hides were given by Eli Jacobson (R. 61, 78, 83) who was intentionally dealing on the credit and account of the petitioner. (R. 78)

A second trustee signed two checks paying substantial funds of the petitioner to the respondents (Exhs. 7 and 8; R. 101) and the third trustee, president of the petitioner, knew or should have known from the numerous documents in the petitioner's files and from the petitioner's books that its credit was being used with the respondents.

The respondents' employee who handled all orders on the account was doing business throughout with the Chicago Dressed Beef Company (R. 66, 68, 69) which the respondents had discovered in the course of the usual credit investigation was a trade name of the petitioner for which they established a line of credit. (R. 21, 41, 61, 62)

The first transaction was on August 25, 1936. It consisted of the purchase of a contract calling for the delivery in December of 40,000 pounds of hides which, as the petitioner understood, is the trading unit on the Commodity Exchange (R. 27, 78). A confirmation of the purchase (like Exh. 13-B; R. 108) was immediately sent to the petitioner and a monthly statement (like Exh. 12; R. 104), showing it, was sent at the end of the month.

The respondents' letter to the petitioner (Exh. 2; R. 20) asking for a signature card (Exh. 3; R. 91) resulted in the card's being returned with the specimen signature "Eli Jacobson" shown thereon.

In September 1936 the carload was ordered sold and advices of its sale and the resulting credit were sent to and received by the petitioner. (R. 46) In January 1937 a check for the profit (Exh. 11; R. 103) was sent payable to the Chicago Dressed Beef Company and collected through the petitioner's bank account although the proceeds were personally pocketed by Eli Jacobson. (R. 52)

On April 17, 1937 Eli Jacobson gave another order to purchase a carload of December hides (i.e. a contract calling for delivery in December of 40,000 pounds of hides). The respondents made the purchase, confirmed it in writ-

ing and at the end of the month sent a statement showing that contract on hand together with another one of the same type purchased on April 22 and confirmed in the same way. The first of these was sold at a loss and the line of credit being exhausted the petitioner's check for $900 (Exh. 10; R. 102) payable to the respondents was credited to the account. (Exh. 12; R. 104)

This check was the first of a series of 16 (Exhs. 7, 8, 9 and 10; R. 101-103) all of which were paid to the respondents as collateral, partial payment, or margin on the account carried on their books under the name Chicago Dressed Beef Company. All 16 checks bearing dates from May 14, 1937 to March 31, 1939 were checks of the petitioner and are clearly recorded in its books. Two of them, those of January 12 and 23, 1939, (Exhs. 7 and 8; R. 101) are signed by Mr. Robert Jacobson, a second trustee of the petitioner and its elected secretary. The others are all signed by Eli Jacobson.

All of the numerous papers including confirmations of purchases and sales (like Exh. 13, 2nd and 3rd sheets) monthly statements (like Exh. 12) and statements of closed contracts (like Exh. 13, 1st sheet) to a total of more than 120 during the 2½ years were received at the petitioner's office, delivered to its treasurer Eli Jacobson, studied by him and filed by him in a desk which was the only desk in the office that the trustees of the petitioner had. (R. 76) All but 43 of these papers were destroyed before the suit. Those 43 which comprise most of the communications after June 1938 were before the Court of Appeals in original form. They were Exh. 6 at the trial. (See R. 21-27 for a brief description and explanation of them.)

At various times, the respondents sent to the order of the Chicago Dressed Beef Company various checks (Exh. 11; R. 103), representing profits realized from sales of contracts or returns of cash previously deposited as margin.

All of these checks were collected through the petitioner's bank account and all of them, except the first mentioned above, were recorded in the petitioner's cash receipts book and ledger (Exh. 22 and 26). The petitioner has had the full actual benefit of these payments made by the respondents, which totaled $4,726.90.

The trustees of the petitioner had infrequent formal meetings, but all of them regularly met in September of each year and minuted the reading of the financial report of the petitioner for the year ending the previous June 30. (Exh. 4; R. 75, 91-99) Interim and yearly reports of an outside auditor were had and the witness Weinstein, petitioner's regular bookkeeper, paid bills and took orders on the o.k. of any one of the three trustees. (R. 52-60) The trustees had a general understanding about the business and acted singly on company matters. (R. 75, 76)

Each trustee, as well as two other brothers in the business, had a personal account in the firm ledger. (R. 51) These accounts showed charges of a miscellaneous nature but no entries about the transactions with the respondents. A special account (No. 20) carried all receipts and disbursements relating to transactions with the respondents, together with entries posted from the journal on June 30, 1938 and March 31, 1939 (R. 51, 52, 55) charging losses on these transactions to those dates against the surplus profits or assets of the petitioner. Although Eli was the principal financial man to whom the others left the books, they were open to all the trustees (R. 49, 81). They and the reports accepted at the formal meetings all showed the use of the petitioner's funds and credit for the purpose of dealing with the respondents. The bookkeeper Weinstein referred to the account with the respondents as a firm account (R. 53; Exhs. 19 and 24) and Eli Jacobson testified clearly he was dealing on the petitioner's account and he so acknowledged in writing. (R. 78; Exhs. 17 and 18) Although Eli Jacobson said

his brother trustee president Nathan never knew about these transactions with the respondents (R. 73, 76) they appear in one form or another on over 20 different pages in the firm's books and were taken into firm calculations of profits. (R. 53, 79; Exhs. 21-26)

The petitioner ran a sizeable business. Its assets total well over $100,000 (Exh. 26). Its slaughter of 75 to 100 cattle a week (R. 77) at 40 to 50 pounds per hide would create 240,000 pounds or six carloads, one every eight weeks.

The business transacted through the respondents in 1937 to December involved nine carloads bought and seven sold with never more than two involving $6,000 apiece as the price was up, on hand at any one time. In December nine were bought and six sold, leaving contracts for five cars on hand at January 1, 1938.

In 1938 up to December, twelve cars were bought and ten sold, each involving about $4,000 but there was never more than one on hand until the end of November. During December four more were bought and two sold, so that 1939 opened with four cars on hand, an amount equivalent to less than a year's production.

Sometimes the petitioner sold hides from its slaughter green, as they were taken off the animal, and at other times it salted them down, held them and sold to a tanner (R. 77). Eli Jacobson kept familiar with the hide market prices (R. 78) and he handled sales of these hides (R. 77).

The transactions on the account with the respondents were apparently a hedge. There were never, except at year end, contracts for more than a car or two standing open and the year end carry-over amounted to less than a year's production as the petitioner was then operating. The transactions were the apparent result of a business policy entailing not only the sale, because of storage or handling problems, of the hides actually removed as the animals were killed, but

also the retention of an interest in the price by purchasing hide futures for sale at a later date.

Summary of Argument.

I. The Decision of the Court of Appeals that the Petitioner was Bound by the Transactions Involved Does Not Fail to Apply the Law of Massachusetts Because, According to the Law of Massachusetts, the Transactions Were Valid, Enforceable and Not *ultra vires* the Petitioner.

II. The Decision of the Court of Appeals that there was Evidence Sufficient to Warrant the Jury Verdict of Authorization or Ratification of the Transactions so that the Petitioner was Bound Is Not in Conflict with Massachusetts Law.

Argument.

I. The petitioner could not under Massachusetts law avail itself of the defenses of illegality and ultra vires as it had ample power to carry on the transactions involved and it received full benefit from them.

The purchase and sale of contracts for future delivery of commodities on exchanges or boards of trade, commonly called "dealing in futures," is not gambling, wagering or otherwise illegal.

> *United States* v. *New York Coffee and Sugar Exchange*, 263 U.S. 611 where at 619 it is said:
>
> "The usefulness and legality of sales for future delivery, and of furnishing an Exchange . . . have been fully recognized by this Court in *Board of Trade* v. *Christie Grain and Stock Co.*, 198 U.S. 236, 246."
>
> *In re Rosenbaum Grain Corporation*, 103 Fed. (2d) 656 (C.C.A. 7)

The uncontroverted evidence of the respondents' course of business (R. 30-35) and their completion of these trans-

actions together with the petitioner's agreement (R. 19) that the respondents actually executed the various transactions in accordance with Exchange rules and customs and had received and paid the money set forth in their declaration, establish the transactions as *bona fide* ones on each of which the respondents became obligated and which they have liquidated at expense to them. In such cases, according to the law of Massachusetts, the broker is entitled to recover. It is absolutely immaterial that Eli Jacobson never intended physically to receive any hides.

Ryan v. *Whitney*, 257 Mass. 218.
Harris v. *Friedmann*, 245 Mass. 479.
Bazirgan v. *Arnold & Sears, Inc.*, 275 Mass. 207.
Savoy Finance Co. v. *DeBiase*, 281 Mass. 425.

The petitioner's suggestion that the transactions were "speculative" cannot affect the respondents' right to recover. Every business is within the meaning of the word "speculation," correctly defined, i.e. purchase and sale with the expectation of profit by rise or fall in price. Speculation as engaging in hazardous business transactions for the chance of unusually large profit cannot affect a third party who does business with an alleged speculator particularly when the speculator is acting within an express grant of power to "deal generally in hides and all other animal products." (R. 85.)

The verb "deal" means to "have to do", "have business relations" or "be concerned" with. The purchase and sale through brokers for cash or on credit of contracts for future delivery of hides is certainly included within "dealing" or "having to do with hides." See *Irwin* v. *Williar*, 110 U.S. 499, cited by the Court of Appeals (R. 137).

The respondents are not to be penalized because an official of the petitioner was, as between himself and his associates, on a frolic. He was acting within the charter scope.

The respondents had no cause to suspect otherwise. Certainly they are not chargeable as a matter of law on this record. There is in fact nothing to call to their attention the relative extent of this trading. To an outsider it would appear perfectly consistent with the petitioner's business. Third parties such as these respondents dealing with the petitioner are under no obligation to audit its books or compare purchases made through them with an annual volume of business.

> See *Dolben* v. *Gleason*, 292 Mass. 511, holding a third party not bound by the provisions of a business trust declaration.

The petitioner had its own accountant and private auditors. The records were perfectly clear and the petitioner cannot now suggest that the respondents should have acted as a policeman within the petitioner's own office.

The petitioner is not a fiduciary trust. It is a business organization, and the Court of Appeals was correct in holding that rules as to the powers of business corporations are applicable to it (R. 136-137). See in this connection *Horowitz* v. *State Street Trust Co.*, 283 Mass. 53, 58, where the Massachusetts Court in discussing the powers of a trustee of a business trust cited as its only authorities two cases involving the powers of officers of business corporations.

Of the cases quoted from and cited on pages 10 to 13 of the petitioner's brief in support of its petition, three of them, *Bremer* v. *Hadley*, 196 Mass. 217, *Tuttle* v. *First National Bank of Greenfield*, 187 Mass. 533 and *Ashley* v. *Winkley*, 209 Mass. 509, are cases without application at bar because they deal with trusts under wills and are not at all related to organizations set up for the purpose of conducting commercial business. Of the others, *Dumaine* v. *Dumaine*, 301 Mass. 214, has to do solely with the power of a trustee under an indenture to make binding determinations as between capital and income and *Greco* v. *Hubbard*, 252

Mass. 37, involves only the rights of a creditor against the beneficial owners of shares in a trust alleged to have been an undisclosed principal.

Downey Company v. *Whistler,* 284 Mass. 61, and the companion case of *Downey Company* v. *The 282 Beacon Street Trust,* 292 Mass. 175, as well as *Horowitz* v. *State Street Trust Co.,* 283 Mass. 53, *supra,* the only other cases relied on by the petitioner, deal with trusts owning real estate. They do not contain any language or law contrary to the opinion of the Circuit Court of Appeals. They deal merely with the question of the authority of one trustee to bind the trust, and there was no evidence to show that all trustees of the trust had authorized or ratified the contract sued on. The question of whether the contract sued upon was or was not within the purview of the objects for which the trust was created was not involved in any of them.

So far as any question of the petitioner's power to engage in the transactions involved is concerned, the very most that is presented is a case of abuse of a power where the petitioner has received full benefit of all transactions including the receipt from the respondents of $4,726.90 in cash. The petitioner's story, based as it is, on the default of its treasurer Eli Jacobson, rests at most on an alleged abuse of power which the respondents could not know of. In such situations the law does not look with favor upon the defense of *ultra vires.*

Edwards v. *International Pavement Co.,* 227 Mass. 206.

Dome Realty Co. v. *Gould,* 285 Mass. 294.

Nims v. *Mt. Hermon Boys' School,* 160 Mass. 177 at 180.

McKean Co. v. *Sidebottom,* 277 Mass. 158.

Young v. *United Zinc Companies,* 198 Fed. 593 (C.C.A. 1).

II. The petitioner is not permitted by the law of Massachusetts to escape liability on the ground that the evidence was insufficient to warrant the jury verdict.

In Massachusetts, as elsewhere, the question of authority, whether it is express, implied, or derived from delegation, course of business, acquiescence or ratification, is for the jury.

Lester v. *Webb*, 1 Allen 34.

Reed v. *Ashburnham Railroad Co.*, 120 Mass. 43, where it was said that "agency may be proved by circumstantial evidence, and if there is any such evidence, even though slight, it should be submitted to the jury."

Nims v. *Mt. Hermon Boys' School*, 160 Mass. 177, where on bookkeeping records and reports much less specific than those involved at bar, the defendant was held bound.

Hartford v. *Mass. Bowling Alleys, Inc.*, 229 Mass. 30.

Glovin v. *Eagle Clothing Co.*, 247 Mass. 215, where the deposit of proceeds in the defendant's account and the appearance of the note on its books was held to warrant the jury verdict of ratification.

Forgeron v. *Corey Hill Garage, Inc.*, 249 Mass. 163.

While the above cases deal with corporations, it is equally clear with reference to Massachusetts business trusts that in addition to implied authority, active ratification or passive acquiescence by failure to object will suffice to make actions of a single trustee effective against any kind of a trust. The charge to the jury in this connection (R. 117, 118, 120) was all that the petitioner could ask for.

Bowen v. *Farley*, 256 Mass. 19.

Zevitas v. *Adams*, 276 Mass. 307.

Rand v. *Farquhar,* 226 Mass. 91.
Hull v. *Newhall,* 244 Mass. 207.
Whittier v. *Child,* 174 Mass. 36.

It results that in this case where the petitioner had no exceptions to the charge of the trial justice and where the jury found for the respondents it is only necessary to show there was slight evidence of authority.

The following array of facts is the compelling evidence which took the case to the jury. They are abundant evidence to show the petitioner was bound by the acts of Eli in its name and they adequately sustain the verdict that Eli Jacobson's actions in the petitioner's name were authorized or ratified by his co-trustees Nathan and Robert.

1. Eli was the treasurer, elected by all three trustees from their number, with authority to sign alone checks on certain of the trust's funds, borrow in the trust's name on his own signature, and act generally as the principal financial officer and executive.

2. Bills were paid on the o.k. of any one of the trustees, and the delegated treasurer, Eli, sold the hides of the kill and watched the market.

3. The regular books of account contain numerous entries showing that the transactions with respondents were on the petitioner's firm account. Surplus and profits were charged (R. 52). Auditor's statements reflecting these transactions were presented to all trustees (R. 75, 98, 99). A casual attention to the books would have disclosed the situation.

4. Over 120 communications from the respondents went over and were kept in the only desk which the trustees had. If the petitioner's trustees will not look to see what their co-trustee is doing for over two years, it cannot be charged against these third-party respondents who by sending notices, confirmations and requesting signatures (Exhs. 1, 6,

17, (R. 39, 40, 113) did all any reasonable man would be expected to do.

5. Eli Jacobson initiated all the transactions. Robert signed checks to the respondents. Nathan talked with the respondents' representative (R. 63) and could not help but know the petitioner's funds and credit were being used. Neither he nor Robert can save the petitioner by failing to appear and submit to cross-examination. Their failure to testify is an admission supporting the respondents' position.

Interstate Circuit v. *United States,* 306 U.S. 208, 225-7 and cases cited.
Kirby v. *Tallmadge,* 160 U.S. 379.
Runkle v. *Burnham,* 153 U.S. 216, 225.
Howe v. *Howe,* 199 Mass. 598, 603.

In this last connection, the case relied on by the petitioner at page 17 of its brief, *Poirier* v. *Terceiro,* 224 Mass. 435, is inapplicable, as all of the above facts are affirmative evidence that Nathan and Robert authorized or ratified the transactions.

The case of *Horgan* v. *Morgan,* 233 Mass. 381 is not, as suggested by the petitioner on page 18 of its brief, distinguishable from the case at bar. That case involved a business entity organized under a declaration of trust. While that particular trust was held under Massachusetts decisions to have constituted a partnership, the principle of the case, whereby a shareholder partner was bound as a result of a course of business shown on the trust books, is even more applicable to the situation presented at bar involving the question of the trust itself being bound. If individual shareholders are bound, *a fortiori* the entity of which they are members is bound. As stated in the *Horgan* case, at page 385, evidence that an examination of the books would have disclosed the facts and even casual attention to the

affairs of the organization would have disclosed how its business was being carried on warrants a finding that the defendant was bound by reason of the course of conduct carried on with knowledge and implied assent. The facts in the case at bar are even stronger in this connection than they were in the *Horgan* case. See also *Nims* v. *Mt. Hermon Boys' School,* 160 Mass. 177, *supra,* where records of less clarity than those at bar were held to bind the defendant.

III. Conclusion.

The petition should be denied, for if the petitioner has a defaulting treasurer who knowingly uses firm credit for himself, the loss should not fall on those who deal with him in good faith.

The opinion and decision of the Circuit Court of Appeals are not in conflict with Massachusetts law because it is not yet the law of Massachusetts that a so-called "Massachusetts business trust" is a vehicle under which persons may set up business, call themselves trustees, have a treasurer, turn over financial affairs to him and then, when he enters a deal which turns out badly, avoid responsibility by saying, "Oh, yes, we used company funds, it is in the company's name, the transactions are all over our books but two of us did not pay attention or know all the details, so the company is free and you who paid the money on our credit are out of luck."

That type of situation is far from the law of Massachusetts, so the petition should be denied with costs and judgment on the verdict for the respondents as ordered by the Circuit Court should be entered.

MARCIEN JENCKES,
JOHN B. REIGELUTH,
Counsel for BOMEISLER, ET ALS. DOING BUSINESS AS E. A. PIERCE & COMPANY, *Respondents.*